

THE Duke of Norfolk's Case:

WITH
REASONS for Passing his BILL.

IF want either of Precedent for a *Parliamentary Divorce*, before going through the tedious and ineffectual Methods of *Doctors Commons*, or of Demonstration of Fact, have hitherto deprived the Duke of Norfolk of that Relief against his Wives Adultery, which the *Divine Law* allows; The late Statute made in the like Case and the Coming in of Two, who while the Duke's former Bill was depending, had been sent away to prevent that Discovery which they now make; cannot but be thought to remove all Objections against an Act of Parliament, not only for the benefit of the Duke, but of the *Publick*; as a means to preserve the Inheritance of so great an Office, and Honours to Persons of the true Religion.

And since *Bishop Cozens* his Argument in the *Lord Ross's Case* has made it Evident, That those Canons which govern the *Spiritual Court* in this matter, are but the remains of Popery; nothing can be now requisite to satisfy the most scrupulous of the *Reformed Religion*, but to set the Duke's Proofs of his Lady's Adultery in a true Light.

The Reputation which the Dutchess had maintained, of Wit and Discretion, made it difficult for many to believe, that she could be surprized in the very Act of Adultery, as had been formerly prov'd. And though then it appeared, that one *Henry Keemer* lived with the Dutchess, while she went by a feigned Name at an House hired for her at *Fox-Hall*, by *Sir John Germain's* Brother; and that *Nicola*, who then lived with *Sir John*, used to receive *Wood* sent from the Dutchess to *Sir John's* house by the *Cockpit*; the withdrawing of *Nicola*, and carrying with him the *Dutch Maid*, equally Entrusted with the secret on *Sir John's* side; left no Evidence of their Constant Conversation, but *Keemer* since dead, and *Susannah Barrington*, who had the like Trust from the Dutchess.

Keemer, though very unwillingly, some years since confessed his living with the Dutchess at *Fox-hall*, where he pretended she was obliged to conceal her self for Debt; and what share *Susannah* had in the secret was unknown, till *Nicola* appeared: *Nicola* coming into *England* sometime since, in Expectation of a Service, express'd his readiness to discover what he knew, and to Endeavour to bring with him the *Dutch Maid*.

She proves, That for two Months the first Summer after the King came for *England*, *Sir John Germain* and the Dutchess lived together as *Man and Wife*, and were seen in Bed together by her, *Mr. Bryan*, and his *Wife*, *Sir John's* Sister: and that *Nicholas Hausfur*, *Sir John's Valet de Chambre*, used to be assisting to him; as the Dutchess's Woman, *Susannah Barrington*, was to her, at going to Bed, and rising. *Eleanor Panels*
Exam. 22. Feb.
1699.

She proves the like Conversation at *Fox-hall*, and the Dutchess's House at the *Millbank*, till the Duke's first Bill for a Divorce was depending; within which time *Nicholas Hausfur*, by *Sir John's* Order, carry'd her away, and *Susannah Barrington*, with intention of going for *Holland*, to prevent their being Examined to what they knew; but the wind proving contrary, they could not go till the Bill was rejected; and then *Sir John* fetch'd back *Susannah*; who was most useful to the Dutchess; but *Hausfur* went for *Holland* with *Ellen*.

He confirms *Ellen's* Evidence in every particular; and besides the Persons mention'd by *Ellen* as privy to *Sir John's* lying with the Dutchess, names *Sir John's* Brother *Daniel*. *Nicholas* having been found very trusty, his Master sent for him to return to his Service; and gave him the opportunity of proving the Continuance of the same Adulterous Conversation at several Times and Places, from the Summer 1692. to the 26th. of April 1696. He swears he had after his return to *Sir John's* Service, seen them in Bed together at *Sir John's* House, at the *Cockpit*, and at the Dutchess's Houses at *Millbank*, and where she now lives; and used to be let into the Dutchess's Apartment by *Susannah Barrington*, or *Keemer*. Nor can any Man who shall read the ample Testimonials given *Mr. Hausfur* by *Sir John*; by the last of which it appears that he served him faithfully as his Steward, reasonably question *Hausfur's* Credit. *Nicholas Hausfur*

Another who had been advanced by *Sir John* from his Footman to *Mr. Hausfur's* place, *William Bayly*, and from thence to a good Office in the Excise, very unwillingly confirmed the Testimony of *Hausfur* and the *Dutch Maid*, not only as to the time of their going from the Service of *Sir John* and the Dutchess, but though being no Foreigner, he could not so easily be sent away to prevent discovery, and therefore was not let so far into the secret as *Hausfur* and the *Dutch Maid*; yet he swears the Dutchess used to come mask'd to his Master's House, that he has gone with him as far as the *Horsferry* towards her House at the *Mill-bank*; that then his Master sometimes lay out all Night, and the next morning he has carry'd Linnen and Cloaths for his Master to *Keemer's* House, or *Keemer* has fetch'd them from him: And this he proves to have been since the rejecting the former Bill; and about Five Years since, when he was succeeded by *Hausfur*, as before he had succeeded *Hausfur*.

Two other Foreigners, *La Fountain*, who had lived with *Sir John*, and was Served with Summons at the Dutchess's House at *Druton*; and *Hugonee*, who ran away from the *Lord Haversham's* since Summons was taken out against him, seem to have had the same Trust that *Hausfur* had: for both declared, That nothing should oblige them to betray their Master's Secrets: One said, No Court could dispense with his Oath of Secrecy: and both declared they would immediately go beyond Sea. Summons have been taken out for *Mr. Brian* and his *Wife*, and *Sir John Germain's* Brother (who are, or lately were in Town) to confess or

or deny what *Nichola* and *Ellen* appeal to them for: and it cannot be imagined that *Sir John* should chuse the Honour of being thought to have to do with a *Dutchess*, before the Clearing her and himself from the Imputation, by bringing his Relations to disprove the Charge, if what is sworn to be within their knowledge is false.

And if *Sir John's* Vanity should prevail with him, at least it is to be presumed, that his Relations would be more just to him and the Lady, than to suffer any thing to pass against them, which they could with Truth and Justice prevent.

But since none of them appear, the World will believe their absenting more than a thousand Witnesses, in confirmation of what *Mr. Hausser*, *Ellen* and *Bayly*, have sworn. Whose Evidence not only stands untouch'd by any thing offered by the *Dutchess's* Witnesses, but is plainly confirmed by them in the principal parts.

This being the nature of the proofs, 'tis observable,

1. That there never yet was any Case of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the latest Case of this kind, there was full Conviction of the Ladies having Children while she lived separate from her Husband; and the presumption was very violent whose the Children were; yet this was but presumption, and that was weakned by the presumption in Law that they were the Husbands; especially since there was no direct proof of the Lover's ever lying with her.

2. Tho in that case, by reason of the interval of Parliament, and fear of the deaths of Witnesses, a Suit was begun in *Doctors Commons*, 'twas taken from thence while the Suit was depending; therefore that was rather an Objection against proceeding in Parliament than an Argument for it.

3. In that Case, several Witnesses were examined at the Bars of both Houses, who had not been examined at *Doctors Commons*, nor any notice given of their Names before their Examination.

4. It appears by that Case, and the present, that the Examinations in Parliament are more solemn and certain than those of the Spiritual Court; which depend too much upon the Honesty of the Register, or his Deputy.

5. Before that Case, Parliaments have either broken through the Rules which bind the Spiritual Court, as in the Case of the Duke of Norfolk, 1 Eliz. where the Parliament ratified a Marriage, as lawful according to God's Law; tho protracted and letted, by reason of certain Decrees and Canons of the Popes Law; or else have dissolved a Marriage where there had been no application to *Doctors Commons*, as in the Case of Mrs. *Wharton*, who had been married to Mr. *Gambel*; and yet there had been no Examination of Witnesses, but what had been before the two Houses.

So long before, in the Case of *Sir Ralph Sadler*, upon proof before the two Houses that the Lady *Sadlers* former Husband had deserted her and disappeared for Four Years before she Married *Sir Ralph*, the Parliament Legitimated her Children by *Sir Ralph*.

Whereas some Object against the Passing the Bill, as if it would countenance a Jurisdiction in the House of Lords to examine to such matters, in the first Instance or Originally; the Objection would be the same if it had begun, as it might, in the House of Commons; but in truth would be of equal force against most private and several publick Acts, occasioned by the examination of Witnesses, or Notoriety of Fact.

Since therefore the Duke has so long, and so often in vain endeavoured to be freed from a Lady, publickly famed and proved to have lived with *Sir John Germain*, as his Wife; the Duke's former disappointments cannot but be powerful Arguments for his speedy obtaining that Justice which the Spiritual Court cannot give him; their Power reaching no further than to that liberty of living as *she list*; some years since settled by Articles: But as none of less Art and Oratory than her Counsel could have turned this into a License to commit Adultery, if *she list*, or a Pardon afterwards; had there not been evidence of her Acting according to such Construction; the Duke would have hoped she had repented of the former Injuries he had received from her; but now hopes she shall not longer continue to bear the Name of his Wife, and put him in danger of being succeeded by *Sir John Germain's* Issue, or deprive him of the expectation of leaving his Honours, Offices, and Estate, to a Protestant Heir.

BY Vertue of an Order, Obtain'd from His Grace the Duke of Norfolk, Earle Marshal of England: *Jeremiah Wilkins*, is hereby Authoriz'd to Print, and Publish His Case, and that no other do presume to Print, or Publish the same.

By His Grace the Duke of Norfolk's Special Command.